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FM AMEMBASSY BRASILIA
TO RUEHC/SECSTATE WASHDC 8023
INFO RUEHRI/AMCONSUL RIO DE JANEIRO 3813
RUEHRC/AMCONSUL RECIFE 6197
RUEHSO/AMCONSUL SAO PAULO 9154
RUEHBU/AMEMBASSY BUENOS AIRES 4571
RUEHAC/AMEMBASSY ASUNCION 5926
RUEHMN/AMEMBASSY MONTEVIDEO 6735
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STATE PASS USTR - SCRONIN/MSULLIVAN
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TAGS: ETRD BEXP ECON BR

SUBJECT: EU TO APPROACH BRAZILIAN GOVERNMENT ON TAXATION OF COSMETICS IMPORTS

11. (U) Action Request - paragraph 2.

12. (U) Summary and Action request. On January 31, EU Econ/Commercial Counselor Fabian Delcros approached Commercial Attache with respect to problems that EU cosmetics companies were experiencing regarding alleged discriminatory taxation upon their exports to Brazil. In essence, the EU argues that the GOB's Industrial Property Tax is being levied in a discriminatory manner because it is assessed against domestic goods at the industrial level but against imported goods at the wholesale level - and the wholesale price structure is higher because that total includes the importers' profit margins. The higher IPI levied on imported products, the EU states, appears to constitute a violation of Article III:2 of the 1994 GATT provisions on national treatment for taxation of imported products. Delcros provided Commercial Attache with an Aide Memoire on this issue (set forth at paragraph 3) and wondered if US Embassy might be willing to join forces with EU diplomats here on a joint demarche to the GOB. While post has worked on behalf of U.S. cosmetics exporters which have experienced problems with Brazilian customs regarding invoicing, to date we have not heard any complaints from them about the application of the IPI tax. Post seeks Washington guidance as to how to respond to the EU's proposal for a coordinated approach. End Summary and Action Request.

13. (U) Text of EU Aide Memoire

The European Commission is concerned about an apparent tax discrimination against cosmetic products imported into Brazil. Such products are always subject to the industrial tax (IPI) at the wholesaler stage, thus resulting in a higher tax burden than that applicable to the like domestic products, which are subject to this tax at the industrial stage. This tax discrimination appears to be inconsistent with Brazil's obligations under the GATT 1994.

Decree 4.544 of 26 December 2002, which regulates the application of the IPI (Imposto sobre Produtos Industrializados), establishes in Section II the cases where non-industrial business is assimilated to industrial business for the purposes of the application of the tax. Decree 4.544 covers both the trading of locally produced goods and the trading of imported goods.

According to Section II of Decree 4.544 of 26 December 2002, these are the cases where the trading of imported products is assimilated to production and therefore subject to the IPI:

-- Wholesalers and retailers receiving the imported goods from an importer from the same business group or corporation (Article 9.II)

-- Wholesalers and retailers trading on goods imported on their behalf through a third legal entity (i.e., and importer (Article 9.IX).

However, by virtue of Article 9.VIII, wholesalers of imported cosmetic products are assimilated to producers, and therefore subject to the IPI tax, in all cases, whether the importation is done on behalf of the importer or on the wholesaler behalf and/or the ownership relationship between importer and trader. "Os estabelecimentos atacadistas que adquirirem de estabelecimentos importadores produtos de procedencia estrangeira, classificados nas posicoes 33.03 a 33.07 da TIPI (Medida Provisoria n. 2.158, de 24 agosto de 2001, art. 39)". This assimilation does not apply to domestic cosmetic products, but only to imported ones.

Therefore, by its own terms, Decree 4.544 clearly discriminates against imported cosmetic products if compared to locally produced goods. The latter are subject to the IPI only once, at the industrial stage. On the other hand, imported cosmetic products are subject to the IPI twice: firstly, when the importation takes place; secondly, when the wholesaler receives the goods from the importer. Although the importer is credited for the industrial tax paid, the consequences of the Brazilian tax provisions are a higher amount of tax finally borne by imported goods, due to the fact that at the wholesaler stage the taxable base includes the importer's profit margin. Consequently, imported cosmetic products are taxed in excess of the like domestic products. This higher tax burden affects the final retail price and it affords protection to domestic production.

For the reasons mentioned above, Brazil's provisions on the application of IPI to imported cosmetics appears to constitute a de

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lege discrimination against imported cosmetic products inconsistent with article III:2 of the GATT 1994 ("National treatment on internal Taxation and Regulation"), which stipulates that the products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject to internal taxes in excess of those applied to like domestic products.

We therefore request the Brazilian authorities to give due consideration to this matter in order to ensure a level playing field for imported and domestic goods.

End Text of EU Aide Memoire.

Sobel